

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

EX PARTE ROBBIN ET AL.

Application for Patent

Filed February 9, 2004

Application No. 10/775,527

Group Art Unit 3695

Examiner: Pollock, Gregory A.

FOR:

**NETWORK-BASED PURCHASE AND DISTRIBUTION OF MEDIA IN
ACCORDANCE WITH PRIORITIES**

REPLY BRIEF

I. INTRODUCTION

Further to the Appeal Brief filed December 8, 2010, and in response to the Examiner's Answer mailed March 2, 2011, Applicant hereby provides the following additional remarks.

II. ARGUMENT

A. INTRODUCTION

These remarks supplement the Appeal Brief filed December 8, 2010, which is hereby incorporated herein by reference.

B. CLAIMS 1-3, 5, 6, 9, 11-16, 19 and 23 ARE NOT OBVIOUS OVER SANTORO ET AL. IN VIEW OF HOMER ET AL.

Claim 1

1. NONE OF THE CITED REFERENCES TEACH OR SUGGEST DIFFERENT INTRA-APPLICATION PRIORITY LEVELS FOR DIFFERENT MEDIA-BASED ACTIONS

At pages 9-11 of the Examiner's Answer, the Examiner continues with a strained reading of Santoro et al. in an *unsuccessful* effort to maintain the rejection of claim 1.

Santoro et al. makes use of refresh priorities for titles of a graphical user interface organized as a grid. As previously noted, Santoro et al. teaches that each tile of its grid [graphical user interface] is separate and pertains to a distinct data stream or application program. As such, any priorities to tiles would not be intra-application priorities for different media-based actions supported by a client

media player application program as recited in claim 1, wherein each of the different media-based actions has a different intra-application priority level.

See, also, pages 7-9 of the Appeal Brief.

2. **NONE OF THE CITED REFERENCES TEACH OR SUGGEST PRIORITY LEVELS FOR DIFFERENT MEDIA-BASED ACTIONS THAT ARE USER-MODIFIABLE**

At pages 11-12 of the Examiner's Answer, the Examiner contends that the titles are media-based actions and that users can control priorities. This is incorrect. As noted above and in the Appeal Brief, titles are not media-based actions. They are just portions of a grid which is simply a graphical user interface that can be used to display information. Also, any priority available to a particular title would be for the title and thus would not pertain to media-based actions.

See, also, pages 9-11 of the Appeal Brief.

3. **EXAMINER'S RATIONALE TO COMBINE SANTORO ET AL. AND HOMER ET AL. IS DEFECTIVE**

At page 12 of the Examiner's Answer, the Examiner merely disagrees with Appellant's arguments and cites some boilerplate law without any response to Appellant's arguments.

4. **CONCLUSION**

Based on any of the foregoing reasons, it is submitted that claim 1 is patentably distinct from Santoro et al., alone or in combination with Homer et al. Therefore, it is respectfully submitted that the Examiner's rejection of claim 1 is improper and should be withdrawn

Claim 2

At page 13 of the Examiner's Answer, the Examiner merely disagrees with Appellant's arguments and relies on the title priorities in Santoro et al. However, as noted previously, the titles in Santoro et al. are not media-based actions supported by a client media player application and are thus also not intra-application priority levels. Moreover, nothing in either Santoro et al. or Homer et al. teaches or suggests providing intra-application priority levels on a per-computer basis or a per-user basis as recited in claim 2.

Claim 3

At pages 13-14 of the Examiner's Answer, the Examiner merely disagrees with Appellant's arguments and relies on the title priorities in Santoro et al. However, as noted previously, the titles in Santoro et al. are not media-based actions supported by a client media player application and are thus also not intra-application priority levels. Moreover, nothing in either Santoro et al. or Homer et al. teaches or suggests coordinating performance of activated operations (pertaining to a particular user) at the client media player application program in accordance with intra-application priority levels (assigned to different media-based actions supported by the client media player application) as recited in claim 3.

Claim 5

At pages 14-15 of the Examiner's Answer, the Examiner merely disagrees with Appellant's arguments and relies on Santoro et al. and Homer et al. to cobble together a rejection of claim 5. In claim 1, the Examiner relied on the titles of the grid-like graphical user interface to pertain to priority levels for different media-based actions. Now, in contrast, the Examiner relied on completely different features of Santoro et al. and Homer et al. to show the specific media-based

actions which, according to claim 5, include at least previewing media, browsing media, purchasing media, and downloading media. Even if Santoro et al. and Homer et al. are able to show one or more of the specific media-based actions, such actions are (i) not in any way associated with different priority levels for different actions, and are (ii) not “titles” of the grid-like user interface. These differences also again demonstrates that the Examiner’s tortured application of these references to claim 1 is clearly incorrect – “titles” of the grid-like interface of Santoro et al. cannot reasonable be considered different media-based action that have different intra-application priorities.

Claim 6

At page 16 of the Examiner’s Answer, the Examiner merely disagrees with Appellant’s arguments and relies on the same argument from the final Office Action.

Claim 9

At pages 16-17 of the Examiner’s Answer, the Examiner merely disagrees with Appellant’s arguments and relies on the title priorities in Santoro et al. However, as noted previously, the titles in Santoro et al. are not media-based actions supported by a client media player application and are thus also not intra-application priority levels. Moreover, nothing in either Santoro et al. or Homer et al. teaches or suggests that the different media-based actions can themselves be prioritized as to their interaction with a media server and wherein the different media-based actions include at least previewing music, browsing music, purchasing music, and downloading music as recited in claim 9.

Claim 11

At page 18 of the Examiner's Answer, the Examiner merely disagrees with Appellant's arguments and relies on the same argument as provided for claim 1. Claim 11 is, however, patentably distinct from Santoro et al. and Homer et al. for the same reasons as noted above and elsewhere for claim 1.

Claim 12

At page 19 of the Examiner's Answer, the Examiner merely disagrees with Appellant's arguments and relies on the title priorities in Santoro et al. However, as noted previously, the titles in Santoro et al. are not media-based actions supported by a client media player application and are thus also not intra-application priority levels. Moreover, nothing in either Santoro et al. or Homer et al. teaches or suggests providing intra-application priority levels on a per-computer basis or a per-user basis.

Claim 13

At pages 19-20 of the Examiner's Answer, the Examiner merely disagrees with Appellant's arguments and relies on the title priorities in Santoro et al. However, as noted previously, the titles in Santoro et al. are not media-based actions supported by a client media player application and are thus also not intra-application priority levels. Moreover, nothing in either Santoro et al. or Homer et al. teaches or suggests coordinating performance of activated operations (pertaining to a particular user) at the client media player application program in accordance with intra-application priority levels (assigned to different media-based actions supported by the client media player application) as recited in claim 13.

Claim 14

At page 20-21 of the Examiner's Answer, the Examiner merely disagrees with Appellant's arguments and relies on the same arguments as used for claims 1 and 11. These arguments of the Examiner were, however, fully traversed above and in the Appeal Brief.

Claim 15

At pages 21-22 of the Examiner's Answer, the Examiner merely disagrees with Appellant's arguments and relies on the title priorities in Santoro et al. However, as noted previously, the titles in Santoro et al. are not media-based actions supported by a client media player application and are thus also not intra-application priority levels. Moreover, nothing in either Santoro et al. or Homer et al. teaches or suggests that the different media-based actions can themselves be prioritized as to their interaction with a media server and wherein the different media-based actions include at least previewing music, browsing music, purchasing music, and downloading music as recited in claim 15.

Claim 16

At pages 22-23 of the Examiner's Answer, the Examiner merely disagrees with Appellant's arguments and relies on the same argument from the final Office Action.

Claim 19

At pages 23-24 of the Examiner's Answer, the Examiner merely disagrees with Appellant's arguments and relies on the title priorities in Santoro et al. However, as noted previously, the titles in Santoro et al. are not media-based actions supported by a client media player application and are thus also not intra-application priority levels. Moreover, nothing in either Santoro et al. or Homer et al. teaches or suggests that the different media-based actions can themselves be prioritized as to their interaction with a media server and wherein the different media-based actions include at least previewing music, browsing music, purchasing music, and downloading music as recited in claim 19.

Claim 23

At page 25 of the Examiner's Answer, the Examiner merely disagrees with Appellant's arguments and relies on the same argument as used for claim 1, which are further traversed herein.

1. NONE OF THE CITED REFERENCES TEACH OR SUGGEST DIFFERENT INTRA-APPLICATION PRIORITY LEVELS FOR DIFFERENT MEDIA-BASED ACTIONS

The Examiner continues with a strained reading of Santoro et al. in an *unsuccessful* effort to maintain the rejection of claim 23. At best, Santoro et al. makes use of refresh priorities for titles of a graphical user interface organized as a grid.

As previously noted, Santoro et al. teaches that each tile of its grid [graphical user interface] is separate and pertains to a distinct data stream or application program. As such, any priorities to tiles would not be intra-application priorities for different media-based actions supported by a client media player

application program as recited in claim 23, wherein each of the different media-based actions has a different intra-application priority level.

See, also, pages 23-24 of the Appeal Brief.

2. NONE OF THE CITED REFERENCES TEACH OR SUGGEST PRIORITY LEVELS FOR DIFFERENT MEDIA-BASED ACTIONS THAT ARE USER-MODIFIABLE

The Examiner's Answer, the Examiner contends that the titles are media-based actions and that users can control priorities. This is incorrect. As noted above and in the Appeal Brief, titles are not media-based actions. They are just portions of a grid which is simply a graphical user interface that can be used to display information. Also, any priority available to a particular title would be for the title and thus would not pertain to media-based actions.

See, also, pages 24-25 of the Appeal Brief.

3. EXAMINER'S RATIONALE TO COMBINE SANTORO ET AL. AND HOMER ET AL. IS DEFECTIVE

The Examiner's Answer, the Examiner merely disagrees with Appellant's arguments and cites some boilerplate law without any response to Appellant's arguments.

4. CONCLUSION

Based on any of the foregoing reasons, it is submitted that claim 23 is patentably distinct from Santoro et al., alone or in combination with Homer et al. Therefore, it is respectfully submitted that the Examiner's rejection of claim 23 is improper and should be withdrawn

Conclusion

Based on the foregoing, it is respectfully submitted that the Examiner's rejection of claims 1-3, 5, 6, 9, 11-16, 19 and 23 is clearly improper and should be withdrawn. Moreover, it is respectfully submitted that claims 1-3, 5, 6, 9, 11-16, 19 and 23 are patentable over Santoro et al. in combination with Homer et al.

B. CLAIM 24 IS NOT OBVIOUS OVER SANTORO ET AL. IN VIEW OF HOMER ET AL. AND NIEH ET AL.

At pages 25 and 26 of the Examiner's Answer, the Examiner merely disagrees with Appellant's arguments and relies on hindsight reconstruction in an effort to reject claim 24.

Claim 24

As stated in the final Office Action, the Examiner appears to admit that Santoro et al. and Homer et al. fails to teach or suggest that "each of the browse, preview, purchase and download operations are executed by different processing threads" as recited in claim 23. However, in an effort to reject claim 24, the Examiner further relies on Nieh et al. as teaching separate processing threads. The portion of Nieh et al. relied upon by the Examiner [page 8, para. 14 and page 9, para. 5] concerns a player that can "play synchronized audio and video streams." (Nieh et al., page 8, para. 14.) "Each media stream flows under the direction of an independent thread control." (Nieh et al., page 8, para. 15.)

The player in Nieh et al. is for streaming playback. As such, the player does not have the capability to support browse, preview, purchase and download operations as does the single client media application program recited in claim 23. At best, Nieh et al. deals with multiple threads of streaming media, which

suggests nothing about a single client media application program using different processing threads for browse, preview, purchase and download operations. As such, Nieh et al. (like Santoro et al. and Homer et al.) cannot teach or suggest that "each of the browse, preview, purchase and download operations are executed by different processing threads" as is recited in claim 24.

Based on any of the foregoing reasons, it is submitted that claim 24 is patentably distinct from Santoro et al., alone or in combination with Homer et al. and Nieh et al. Accordingly, it is respectfully submitted that the Examiner's rejection of claim 24 is improper and should be withdrawn for these reasons as well as reasons similar to those noted above with respect to claim 23.

Conclusion

Based on the foregoing, it is respectfully submitted that the Examiner's rejection of claim 24 is clearly improper and should be withdrawn. Moreover, it is respectfully submitted that claim 24 is patentable over Santoro et al., alone or in combination with one or more of Homer et al. and Nieh et al.

C. CONCLUSION

It is respectfully requested that the Board reverse the rejection of all pending claims under 35 USC §103(a).

In the interest of speedy and just determination of the issues and for the many reasons set forth in this Appeal Brief, it is requested that the Board reverse the Examiner's rejection and should order the Examiner to pass this application to allowance.

If any additional fees are required in connection with the filing of this Appeal Brief, the Commissioner is authorized to charge Deposit Account No. 504298 (Order No. 101-P271).

Respectfully submitted,

/C. Douglass Thomas/

C. Douglass Thomas
Reg. No. 32,947

2055 Junction Ave., Suite 205
San Jose, CA 95131
408-955-0535